

APPEAL NO. 060207
FILED MARCH 16, 2006

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 12, 2005. The hearing officer resolved the disputed issues by deciding that respondent 2 (claimant) is entitled to supplemental income benefits (SIBs) for the first and second quarters. Records of the Texas Department of Insurance, Division of Workers' Compensation (Division) reflect that the hearing officer's decision was not appealed to the Appeals Panel. In an Order for Attorney's Fees (Order) dated December 30, 2005, the hearing officer approved \$4,485.00 of the \$5,942.50 requested by the appellant (attorney). The attorney represented the claimant at the CCH on the disputed issues of entitlement to first and second quarter SIBs. The Order reflects that the fees are to be paid pursuant to Section 408.147(c) and 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)). The attorney appeals the Order, contending that the hearing officer abused her discretion when she failed to approve attorney's fees at \$200.00 per hour as requested by the attorney. Respondent 1 (carrier) requests that the Order be affirmed. No response was received from the claimant.

DECISION

Reversed and remanded.

The attorney requested 29.15 hours for attorney services at the rate of \$200.00 per hour and 2.25 hours for legal assistant services at the rate of \$50.00 per hour for a total fee of \$5,942.50. The hearing officer approved 29.15 hours for attorney services at the rate of \$150.00 per hour and 2.25 hours for legal assistant services at the rate of \$50.00 per hour for a total fee of \$4,485.00. The attorney contends that the hearing officer abused her discretion in failing to approve attorney's fees at \$200.00 per hour as requested by the attorney.

The standard of review in an attorney's fees case is abuse of discretion. Appeals Panel Decision (APD) 022337, decided October 30, 2002. Since this case involves a claimant's attorney's fees in a SIBs dispute in which the claimant prevailed, Section 408.147(c) and Rule 152.1(f) apply. Both of these provisions speak in terms of reasonable and necessary attorney's fees and provide for payment of the attorney's fees by the carrier. Rule 152.4(d) provides for a maximum hourly rate for legal services by an attorney of \$150.00; however, pursuant to Rule 152.1(f), Rule 152.4 regarding guidelines for legal services does not apply to a claimant's attorney's fees where the claimant prevails in the SIBs dispute. APD 970805, decided June 18, 1997.

The Division's Attorney Fee Processing System reflects that the attorney provided a justification text for the fees requested specifically addressing the matter of the \$200.00 hourly rate, but there is no log text reflecting why the hearing officer reduced the hourly rate requested or if the hearing officer considered the attorney's

justification text. We agree with the attorney that the hearing officer abused her discretion by reducing the hourly rate requested without explanation. We reverse the Order and remand the attorney's fees matter to the hearing officer for the hearing officer to consider the attorney's justification text and the factors set forth in Section 408.221(d) in determining whether the \$200.00 hourly rate should be approved.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202, as amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of time in which a request for appeal or a response must be filed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge